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No. 03-923

In the Supreme Court of the United States

STATE OF ILLINOIS, PETITIONER

v.

ROY I. CABALLES

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

THEODORE B. OLSON
Solicitor General
Counsel of Record

CHRISTOPHER A. WRAY
Assistant Attorney General

MICHAEL R. DREEBEN
Deputy Solicitor General

JAMES A. FELDMAN
Assistant to the Solicitor General

JOHN A. DRENNAN
Attorney

Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

QUESTION PRESENTED

Whether the Fourth Amendment requires reasonable, articulable suspicion to justify using a drug-detection dog to sniff a vehicle during a legitimate traffic stop.

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BRIEF FOR THE UNITED STATES
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INTEREST OF THE UNITED STATES

This case presents the question whether officers must have reasonable, articulable suspicion of a narcotics crime before having a dog sniff a car to determine the presence of narcotics during the course of a legitimate traffic stop. Because the United States uses trained canines to detect concealed weapons and persons in stopped vehicles, and because the government prosecutes cases in which evidence from dog-sniff tests is developed by state authorities, the Court's resolution of that question will affect federal criminal investigations and prosecutions.

STATEMENT

1. On November 12, 1998, at approximately 5 p.m., Illinois State Trooper Daniel Gillette stopped respondent on Interstate Route 80 in La Salle County, Illinois, for driving 71 miles per hour in a 65 mile per hour zone. Gillette radioed the police dispatcher to say that he was making the stop and to ask for a check on respondent's license plates. Hearing the radio transmission, a second trooper, Craig Graham, departed for the scene with his drug-detection dog. Pet. App. 1a, 12a.

Once Gillette pulled over respondent's vehicle, he informed respondent that he had been speeding and asked to see his driver's license, vehicle registration, and proof of insurance. Respondent complied. Gillette noticed an atlas on the front seat, an open ashtray, the smell of air freshener, and a pair of suits hanging in the back without any other luggage. Gillette told respondent to reposition his vehicle out of traffic on the shoulder of the road and then to come back to the police car. After both vehicles were moved away from traffic, respondent entered the patrol car and was told by Gillette that he would be receiving a warning ticket. Gillette then radioed the police dispatcher to check on the validity of respondent's driver's license and to check for outstanding warrants. Pet. App. 2a, 12a.

While waiting to hear back from the dispatcher, Gillette asked respondent about his destination and what Gillette had observed was respondent's "dressed up" attire. Respondent replied that he was moving from Las Vegas to Chicago, and that he was dressed up because he was a salesman, although currently unemployed. Respondent was nervous and continued to be nervous even after being told that he would be issued

only a warning, which Gillette found unusual. Pet. App. 2a, 12a-13a.

At 5:09:58, the dispatcher advised Gillette that respondent had surrendered a valid Illinois driver's license to Nevada and, at 5:11:58, the dispatcher confirmed the validity of respondent's Nevada driver's license. Gillette immediately requested respondent's criminal history from the dispatcher. Gillette next requested respondent's permission to search his vehicle, but respondent refused. Gillette asked whether respondent had ever been arrested, and respondent said that he had not. At 5:12:42, the dispatcher advised Gillette that respondent had two prior arrests for marijuana distribution. Gillette began to write the warning ticket. While writing the ticket, Gillette was interrupted by another officer calling him on the radio about an unrelated matter. Pet. App. 2a, 13a, 17a n.1.

Also during the time Gillette was writing the ticket, Trooper Graham arrived and started walking his dog around respondent's vehicle. At approximately 5:13, while Gillette was still writing the ticket, Graham informed Gillette that the dog alerted at respondent's trunk. Gillette then searched the trunk and found marijuana. At 5:15, Gillette changed the activity code for the stop to a narcotics investigation. Respondent was arrested and taken to the police station. Pet. App. 3a, 13a, 24a.

2. Respondent was charged with one count of cannabis trafficking, in violation of 720 Ill. Comp. Stat. Ann. 550/5.1(a) (West 1998). He filed a motion to suppress the seized drug evidence and to quash the arrest. The trial court denied the motion and, after a stipulated bench trial, found respondent guilty. The court sentenced him to 12 years of imprisonment and a $256,136 fine. Pet. App. 3a, 13a-14a.

3. The Appellate Court of Illinois affirmed. Pet. App. 11a-19a. The court rejected respondent's argument that the delay occasioned by Officer Gillette's request for a criminal-history check on respondent—the 44-second period between the time the dispatcher confirmed the validity of respondent's Nevada driver's license and the time Gillette received respondent's criminal history—unreasonably extended the period of the detention. *Id.* at 16a-17a. The court held that the delay was "*de minimis*," and that it "was not an unreasonable delay under the totality of the circumstances." *Id.* at 17a. The court further held that the police did not need reasonable suspicion to justify the canine sniff. *Id.* at 3a, 18a n.2.

4. a. The Supreme Court of Illinois reversed by a 4-3 vote. Pet. App. 1a-6a. The court held that, although the traffic stop in this case was based on probable cause, the reasonableness of the stop had to be determined under the "principles" of *Terry* v. *Ohio*, 392 U.S. 1 (1968). Pet. App. 3a-4a. The majority relied on its earlier decision in *People* v. *Cox*, 782 N.E. 2d 275, 280 (Ill. 2002), cert. denied, 123 S. Ct. 2574 (2003), in which it had held that the police had impermissibly extended both the duration and the scope of a traffic stop by using a drug-sniffing dog that arrived on the scene 15 minutes after the initial detention. *Ibid.* The *Cox* court concluded that the police erred because they "did not have 'specific and articulable facts which, taken together with rational inferences therefrom,' reasonably warranted an extended detention of defendant's vehicle, and the ensuing drug-sniff test." *Id.* at 281.

In this case, the court concluded that, although it was undisputed that the traffic stop was properly initiated, "the police impermissibly broadened the scope of the traffic stop * * * into a drug investigation because

there were no specific and articulable facts to support the use of a canine sniff." Pet. App. 4a-5a. In particular, the majority stated that "[t]he police did not detect the odor of marijuana in the car or note any other evidence suggesting the presence of illegal drugs." *Id.* at 4a. The majority added that the trooper's observations concerning respondent—that he said he was moving from one state to another but had little visible luggage; that the car smelled of air freshener; that he was dressed for business but was driving across the country while unemployed; and that he seemed unusually nervous—were insufficient viewed singularly or collectively to "support a canine sniff." *Id.* at 5a.

b. Justice Thomas filed a dissenting opinion. Pet. App. 6a-10a. He argued that *Cox*'s conclusion that the police may not conduct a dog sniff of a vehicle absent reasonable suspicion was dicta that conflicts with this Court's decisions holding that a canine sniff is not a search and that walking a narcotics-detection dog around the exterior of a vehicle does not transform a legitimate seizure of a vehicle into a search. *Id.* at 7a (citing *United States* v. *Place*, 462 U.S. 696, 707 (1983), and *City of Indianapolis* v. *Edmond*, 531 U.S. 32 (2000)). The dissent argued that if a dog sniff were in fact a search, the majority's conclusion that the search was permissible on the basis of reasonable suspicion was in error because probable cause is required to conduct a warrantless search of a vehicle. *Id.* at 9a-10a.

SUMMARY OF ARGUMENT

The traffic stop of respondent, including the dog sniff, was not an unreasonable search or seizure under the Fourth Amendment. Although the traffic stop was undoubtedly a "seizure" of respondent, it was constitutionally valid because it was supported by probable

cause to believe that respondent had violated state traffic laws. And there was no unreasonable "search" in this case, because this Court's cases establish that a dog sniff of a vehicle is not a search under the Fourth Amendment at all. As the Court has explained in *United States* v. *Place*, 462 U.S. 696 (1983), and *City of Indianapolis* v. *Edmond*, 531 U.S. 32 (2000), a dog sniff does not intrude upon legitimate expectations of privacy because it does not invade a protected place, it reveals only very limited information about the presence of contraband drugs, and it does not cause undue embarrassment or inconvenience. That conclusion is reinforced when the dog sniff is directed toward a vehicle, which this Court has long recognized is the subject of a diminished expectation of privacy.

Nor did the manner of conducting the seizure in this case render it unreasonable under the Fourth Amendment. A search and seizure that is conducted in such a way as to make an exceptional intrusion into privacy or property interests protected by the Fourth Amendment may be found to be unreasonable. But, precisely because a dog sniff does not intrude into privacy or property interests protected by the Fourth Amendment, its use during an otherwise reasonable traffic stop cannot convert the stop into an unreasonable search or seizure under the Fourth Amendment.

The Illinois Supreme Court held that the permissible scope of the traffic stop in this case was governed by the principles of *Terry* v. *Ohio*, *supra*, and it held that the dog sniff unjustifiably broadened that scope by converting the stop into a drug investigation without reasonable suspicion. The traffic stop in this case, however, was a probable-cause stop based on an observed violation of law, not a reasonable-suspicion stop subject to the scope limitations of *Terry*. Accordingly, the reasonableness of the stop does not depend on whether it satisfies the scope limitations of the *Terry* doctrine.

Even if viewed as a *Terry* stop, the traffic stop in this case would satisfy Fourth Amendment standards. In conducting a *Terry* stop, law enforcement agents may intrude on privacy and property interests protected by the Fourth Amendment only insofar as is reasonable to confirm or dispel their reasonable suspicions. Under *Place* and *Edmond*, however, the dog sniff of respondent's vehicle did not intrude on respondent's legitimate expectations of privacy or on his property interests at all. Contrary to the Illinois Supreme Court's view, the fact that law enforcement agents during a traffic stop may engage in conduct, such as a dog sniff, that does *not* intrude on protected Fourth Amendment interests does not broaden the scope of the stop. Even if viewed as a *Terry* stop, therefore, the stop in this case was not unreasonably broad.

Respondents have argued that the traffic stop in this case was unconstitutional because its duration was unreasonably extended. The Illinois Supreme Court, however, did not examine the duration of the traffic stop in this case, and that court's recitation of the facts establishes, to the contrary, that the dog sniff did not extend the duration of the stop. The entire stop, from inception to the time the marijuana was discovered, took less than nine minutes, well within the reasonable time period for a routine traffic stop.

ARGUMENT

A DOG SNIFF DURING THE COURSE OF A LAWFUL TRAFFIC STOP IS VALID UNDER THE FOURTH AMENDMENT WITHOUT ANY REQUIREMENT OF REASONABLE SUSPICION

The Fourth Amendment's prohibition on the violation of the "right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures," U.S. Const. Amend. IV, serves to protect "two types of expectations, one involving 'searches,' the other 'seizures.' A 'search' occurs when an expectation of privacy that society is prepared to consider reasonable is infringed." See *United States* v. *Jacobsen*, 466 U.S. 109, 112 (1984). "[A] seizure deprives the individual of dominion over his or her person or property." *Horton* v. *California*, 496 U.S. 128, 133 (1990); see *Florida* v. *Bostick*, 501 U.S. 429, 434 (1991). Because the dog sniff of respondent's car was neither an unreasonable search nor an unreasonable seizure, it did not violate the Fourth Amendment.

A. The Seizure Of Respondent Was Supported By Probable Cause And Therefore Permissible

Respondent was undoubtedly "seized" under the Fourth Amendment when he was stopped for a traffic violation, but that seizure was permissible. As this Court has explained, "[t]emporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a 'seizure' of 'persons' within the meaning of" the Fourth Amendment. *Whren* v. *United States*, 517 U.S. 806, 809-810 (1996). But "[t]he decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred." *Id.* at 810. In this case, Trooper Gillette himself observed respondent exceeding the speed limit. Pet. App. 1a, 12a. Accordingly, he had probable cause to stop the vehicle. The resulting seizure of respondent and the vehicle was reasonable, and therefore permissible, under the Fourth Amendment.

B. The Dog Sniff Of Respondent's Car Was Not A "Search" Under The Fourth Amendment

There was also no unreasonable "search" in this case, because the dog sniff of respondent's car is not a "search" under the Fourth Amendment at all. Although respondent may have expected that the marijuana in his car would not be discovered, "[t]he concept of an interest in privacy that society is prepared to recognize as reasonable is, by its very nature, critically different from the mere expectation, however well justified, that certain facts will not come to the attention of authorities." *United States* v. *Jacobsen*, 466 U.S. 109, 122 (1984). This Court's cases establish that, because a dog sniff of a vehicle does not interfere with a legitimate expectation of privacy under the Fourth Amendment, the dog sniff of respondent's vehicle was not a "search" subject to the Amendment's requirements.

1. In *United States* v. *Place*, 462 U.S. 696 (1983), agents arranged for a narcotics detection dog to sniff a suitcase that they had seized at an airport. The Court noted that "if this investigative procedure is itself a search requiring probable cause, the initial seizure of respondent's luggage for the purpose of subjecting it to the sniff test * * * could not be justified on less than probable cause." *Id.* at 706. The Court held, however, that probable cause was unnecessary, because "the particular course of investigation that the agents intended to pursue here—exposure of respondent's luggage,

which was located in a public place, to a trained canine—did not constitute a 'search' within the meaning of the Fourth Amendment." *Id.* at 707.

The Court reached that conclusion based on an analysis of the particular features of a dog sniff. The Court recognized that "a person possesses a privacy interest in the contents of personal luggage that is protected by the Fourth Amendment." 462 U.S. at 707. But a canine sniff "does not require opening the luggage," it "does not expose noncontraband items that otherwise would remain hidden from public view," and it "discloses only the presence or absence of narcotics, a contraband item." *Ibid.* Moreover, it does not cause "the embarrassment and inconvenience entailed in less discriminate and more intrusive investigative methods." *Ibid.* Because the canine sniff "is so limited both in the manner in which the information is obtained and in the content of the information revealed by the procedure," the Court concluded that it was not a search under the Fourth Amendment. *Ibid*; see *Jacobsen*, 466 U.S. at 123 (citing *Place* and holding that chemical test "that can reveal whether a substance is cocaine, and no other arguably 'private' fact, compromises no legitimate privacy interest").

2. In *City of Indianapolis* v. *Edmond*, 531 U.S. 32 (2000), the Court applied that reasoning to a dog sniff of a car conducted, as here, without any individualized suspicion. In *Edmond*, police officers set up a traffic checkpoint to interdict unlawful drugs, and dog sniffs were performed on cars stopped at the checkpoint. *Id.* at 35. The Court held that the checkpoint constituted a seizure under the Fourth Amendment, which the Court ultimately held to be unconstitutional because not accompanied by some measure of individualized suspicion. *Id.* at 41. But the Court expressly rejected the argument that the dog sniff was a search subject to Fourth Amendment standards. To the contrary, the Court held that "[t]he fact that officers walk a narcotics-detection dog around the exterior of each car * * * does not transform the seizure into a search." *Id.* at 40 (citing *Place*). That is because "an exterior sniff of an automobile does not require entry into the car and is not designed to disclose any information other than the presence or absence of narcotics." *Ibid.*[1]

3. Under *Place* and *Edmond*, the dog sniff of the car in this case is not a Fourth Amendment "search." As in those cases, the dog sniff did not intrude into the interior of the item searched, it did not reveal noncontraband items not ordinarily exposed to public view, it provided only limited information about the presence of contraband drugs, and it did not cause the owner embarrassment or even inconvenience. That is sufficient to establish that, just as in *Place* or *Edmond*, the Fourth Amendment does not require police officers to have an independent justification, in the form of particularized suspicion, before having a dog sniff a motor vehicle during the course of a lawful traffic stop.

That conclusion is reinforced by this Court's long "recogni[tion] that the physical characteristics of an automobile and its use result in a lessened expectation of privacy therein." *New York* v. *Class*, 475 U.S. 106, 112 (1986); see *Illinois* v. *Lidster*, 124 S. Ct. 885, 889

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[1] This Court's holding in *Kyllo* v. *United States*, 533 U.S. 27 (2001), that use of a thermal-imaging device to detect the heat radiating from a house was a "search" under the Fourth Amendment is not to the contrary, both because *Kyllo* involved the "interior of the home," *id.* at 34, an area where "privacy expectations are most heightened," *id.* at 33, and because *Kyllo* involved the use of technology that did not merely reveal the presence of contraband, see *id.* at 35-36.

(2004); *Wyoming* v. *Houghton*, 526 U.S. 295, 303 (1999); *California* v. *Carney*, 471 U.S. 386, 391-392 (1985). Cars are used on public streets and are subject to pervasive governmental regulation. The car in this case was stationed on the side of a public highway when the dog sniff took place. Car owners do not have a reasonable expectation that they could prevent dogs from sniffing their vehicles located on public streets. Cf. *Dow Chemical Co.* v. *United States*, 476 U.S. 227, 238 (1986). For that reason, too, a dog sniff does not constitute a "search" under the Fourth Amendment and does not require an independent justification.[2]

C. The Dog Sniff Did Not Render The Manner Of Conducting The Seizure Unreasonable

Even a search or seizure that is reasonable at its inception may be conducted in such a fashion as to violate

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[2] The courts of appeals have generally agreed that, because a dog sniff is not a search, a dog sniff on the exterior of a stopped vehicle need not be justified by a showing of reasonable suspicion that the sniff will uncover evidence of illegal activity. See *Merrett* v. *Moore*, 58 F.3d 1547, 1553 (11th Cir. 1995) (rejecting argument that the use of dogs to sniff the exterior of cars at a roadblock without an individualized reasonable suspicion of drug-related criminal activity amounted to an unconstitutional search), cert. denied, 519 U.S. 812 (1996); *United States* v. *Seals*, 987 F.2d 1102, 1106 (5th Cir.) ("We hold that the dog sniff, under these circumstances, is not a 'search' within the meaning of the Fourth Amendment and therefore an individualized reasonable suspicion of drug-related criminal activity is not required when the dog sniff is employed during a lawful seizure of the vehicle."), cert. denied, 510 U.S. 853 (1993); *United States* v. *Rodriguez-Morales*, 929 F.2d 780, 788-789 (1st Cir. 1991) (distinguishing earlier case and holding that "[s]o long as the automobile is lawfully impounded, the canine sniff test can be performed without any showing of reasonable suspicion"), cert. denied, 502 U.S. 1030 (1992); *United States* v. *Morales-Zamora*, 914 F.2d 200, 203 (10th Cir. 1990).

the Fourth Amendment. Where a search or seizure is "conducted in an extraordinary manner, unusually harmful to an individual's privacy or even physical interests," the Fourth Amendment requires a balancing of interests to determine whether the search or seizure was nonetheless "reasonable." *Whren* v. *United States*, 517 U.S. 806, 819 (1996). "[T]he question whether a search or seizure is 'extraordinary' turns, above all else, on the manner in which the search or seizure is executed." *Atwater* v. *City of Lago Vista*, 532 U.S. 318, 354 (2001). As examples of cases in which such a further inquiry into the manner of conducting a search is necessary, the Court in *Atwater* and *Whren* listed seizure by means of deadly force, see *Tennessee* v. *Garner*, 471 U.S. 1 (1985); unannounced entry into a home; see *Wilson* v. *Arkansas*, 514 U.S. 927 (1995), entry into a home without a warrant; see *Welsh* v. *Wisconsin*, 466 U.S. 740 (1984); and physical penetration of the body, see *Winston* v. *Lee*, 470 U.S. 753 (1985). See also *Atwater*, 532 U.S. at 354; *Whren*, 517 U.S. at 818.

Where a search or seizure does not involve such an exceptional degree of intrusion into privacy or physical interests protected by the Fourth Amendment, no special inquiry into the manner of conducting a search or seizure is necessary. That is the case here, because a dog sniff does not constitute such an exceptional intrusion. This Court has made clear that a dog sniff of a vehicle is not a "search" at all. See *City of Indianapolis* v. *Edmond*, *supra*. It follows that a dog sniff cannot be an exceptional intrusion into constitutionally protected privacy interests. Nor does a dog sniff involve any intrusion on the owner's protected interests in dominion over his or her person or property. Accordingly, the fact that a dog sniff is conducted during a traffic stop does not call into question the manner of conducting the

stop, and it therefore does not suggest that the stop has become "unreasonable" under the Fourth Amendment.

D. The Dog Sniff Did Not Convert The Traffic Stop In This Case Into An Impermissible *Terry* Stop

The Illinois Supreme Court determined that it must apply the "test adopted in *Terry* v. *Ohio* * * * to determine the overall reasonableness of the stop" in this case. Pet. App. 3a. Applying *Terry*, the court concluded that the dog sniff "impermissibly broadened the scope of the traffic stop in this case into a drug investigation because there were no specific and articulable facts to support the use of a canine sniff." *Id.* at 4a-5a (citing *People* v. *Cox*, 782 N.E.2d 275, 280 (Ill. 2002), cert. denied, 123 S. Ct. 2574 (2003)). The court erred because the traffic stop in this case was not a reasonable-suspicion *Terry* stop and because, even if the principles of *Terry* governed, the stop in this case would have been permissible.

1. *The traffic stop was not subject to the limitations of a Terry stop.*

a. The traffic stop in this case was not a *Terry* stop, and it was not subject to the limitations applicable to the scope of such stops. Under *Terry*, an "officer's reasonable suspicion that a person may be involved in criminal activity permits the officer to stop the person for a brief time and take additional steps to investigate further." *Hiibel* v. *Sixth Judicial Dist. Ct. of Nev.*, No. 03-5554 (June 21, 2004), slip op. 6. In this case, Trooper Gillette had probable cause—indeed, a particularly clear form of probable cause—to stop respondent, because he had observed respondent violating the traffic laws by exceeding the speed limit. Accordingly, the stop in this case was a probable-cause stop based on an observed violation of the law, not a reasonable-suspicion stop subject to the scope limitations of the *Terry* doctrine.

b. Although this Court has analogized traffic stops to *Terry* stops for some purposes, those cases do not suggest that a traffic stop is impermissible if it does not conform to *Terry*'s limitations. In *Berkemer* v. *McCarty*, 468 U.S. 420, 439 (1984), this Court noted that a traffic stop is analogous to a *Terry* stop in its brief duration and non-police dominated atmosphere. The Court reasoned that "[t]he comparatively nonthreatening character of detentions of this sort" supports the conclusion that "persons temporarily detained pursuant to such stops are not 'in custody' for the purposes of *Miranda* [v. *Arizona*, 384 U.S. 436 (1966)]." 468 U.S. at 440. But the Court was careful to explain that "[n]o more is implied by this analogy than that most traffic stops resemble, in duration and atmosphere, the kind of brief detention authorized in *Terry*." *Id.* at 439 n.29. The Court added that it "of course do[es] not suggest that a traffic stop supported by probable cause may not exceed the bounds set by the Fourth Amendment on the scope of a *Terry* stop." *Ibid.*[3] *Berkemer* accordingly

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[3] Two courts of appeals have held that the permissible scope of questioning during a traffic stop based on probable cause is broader than for a stop based on reasonable suspicion. See *United States* v. *$404,905.00 in U.S. Currency*, 182 F.3d 643 (8th Cir. 1999), cert. denied, 528 U.S. 1161 (2000); *United States* v. *Childs*, 277 F.3d 947 (7th Cir.) (en banc), cert. denied, 537 U.S. 829 (2002); but see *United States* v. *Holt*, 264 F.3d 1215, 1217, 1230 (10th Cir. 2001) (en banc) (finding that traffic stops should be analyzed under *Terry* regardless of whether based on probable cause or reasonable suspicion). A similar question regarding the scope of questioning during a detention of occupants during execution of a search warrant, see *Michigan* v. *Summers*, 452 U.S. 692 (1981), is presented in *Muehler* v. *Mena*, cert. granted, No. 03-1423 (June 21, 2004).

expressly disavowed the proposition that a probable-cause traffic stop is subject to the limitations applicable to *Terry* stops based on reasonable suspicion.

The Illinois Supreme Court cited two cases from this Court in applying *Terry* limitations to the traffic stop in this case. See Pet. App. 4a. Neither case, however, supports the court's conclusion. In *Michigan* v. *Long*, 463 U.S. 1032 (1983), this Court held that, during a *Terry* stop of a suspect in a vehicle, police officers may undertake a protective search of the vehicle for weapons if they have reasonable suspicion that the suspect is potentially dangerous. *Id.* at 1051. The Court, however, made clear that the case involved "a protective search" following a *Terry* stop, "and not a search justified by probable cause to arrest for speeding, driving while intoxicated, or any other offense." *Id.* at 1035 n.1.

In *Pennsylvania* v. *Mimms*, 434 U.S. 106 (1977) (per curiam), the Court relied on *Terry* for the proposition that police officers may take reasonable steps to protect their safety during a traffic stop (as during any other stop) of an individual, *id.* at 110, and the Court also held that the frisk of the motorist for weapons once a suspicious bulge had been observed was justified under *Terry*, *id.* at 111-112. The Court's brief per curiam opinion nowhere discusses whether a probable-cause traffic stop must be analyzed as a *Terry* stop, and the Court's holdings did not depend on a conclusion that a probable-cause traffic stop is subject to all of the same limitations as a *Terry* stop.

c. *Long* and *Mimms* accordingly do not support the Illinois Supreme Court's holding that a probable-cause traffic stop is subject to the scope limitations of a *Terry* stop, and *Berkemer* suggests to the contrary. That does not mean that a probable-cause traffic stop is subject to no Fourth Amendment limitations. See, *e.g.*,

Knowles v. *Iowa*, 525 U.S. 113, 117 (1998) (noting that a routine traffic stop "does not by itself justify the often considerably greater intrusion attending a full field-type search" incident to a custodial arrest). But probable cause is the "gold standard" under the Fourth Amendment, and its presence authorizes a more extensive intrusion than can be justified when only reasonable suspicion is present. See, *e.g.*, *Place*, 462 U.S. at 709 (noting that "the brevity of the invasion of the individual's Fourth Amendment interests is an important factor in determining whether the seizure is so minimally intrusive *as to be justifiable on reasonable suspicion*") (emphasis added); *United States* v. *Brignoni-Ponce*, 422 U.S. 873, 880 (1975) ("Because of the limited nature of the intrusion, stops of this sort may be justified on facts that do not amount to the probable cause required for an arrest."). Accordingly, for the reasons given above, see pp. 8-14, *supra*, the probable-cause traffic stop in this case was "reasonable" under the Fourth Amendment, regardless of whether it exceeded the limitations on the proper scope of a *Terry* stop.

2. *Even viewed as a Terry stop, the stop here was permissible.*

a. In any event, even viewed as a *Terry* stop, the traffic stop in this case would satisfy Fourth Amendment standards. Under *Terry*, an investigatory stop based on reasonable suspicion must be "reasonably related in scope to the circumstances which justified the interference in the first place." *Terry*, 392 U.S. at 20. That "scope" limitation means that the police may intrude on protected Fourth Amendment interests only insofar as reasonable "to confirm or dispel their suspicions." *United States* v. *Sharpe*, 470 U.S. 675, 686 (1985); see *Brignoni-Ponce*, 422 U.S. at 881-882

("further detention or search" beyond what is necessary to resolve suspicion "must be based on consent or probable cause").[4]

b. Under *Place* and *Edmond*, the dog sniff of respondent's vehicle was not an intrusion on respondent's reasonable expectation of privacy or on his exercise of dominion over his person and his possessions. Even under *Terry* standards, therefore, the dog sniff did not intrude on interests protected by the Fourth Amendment, and the Illinois Supreme Court erred in concluding that the dog sniff "impermissibly broadened the scope of the traffic stop in this case." Pet. App. 4a. Accordingly, even under *Terry*, the dog sniff would not have rendered the stop unconstitutional.

The Illinois Supreme Court's error resulted from its apparent belief that *any* action taken by a police officer during a *Terry* stop that does not directly relate to confirming or dispelling the officer's reasonable suspicion broadens the stop unjustifiably. The Fourth Amendment, however, is not concerned with establishing a general code of police conduct, but with protection of legitimate expectations of privacy and of interests in

[4] In *Hiibel* v. *Sixth Judicial Dist. Ct. of Nev.*, No. 03-5554 (June 21, 2004), the Court rejected the argument that a state law requiring suspects to identify themselves during a *Terry* stop "circumvents the probable cause requirement, in effect allowing an officer to arrest a person for being suspicious." Slip op. 9. The Court explained that "an officer may not arrest a suspect for failure to identify himself if the request for identification is not reasonably related to the circumstances justifying the stop." *Id.* at 10. The Court's statement in *Hiibel* does not suggest that everything a police officer does in the course of a *Terry* stop must be related to the purposes of the stop, even if the police officer's conduct (*i.e.*, asking a question or having a dog sniff a vehicle) does *not* intrude on protected Fourth Amendment interests.

the ability to exercise dominion over one's person and property. A *Terry* stop is thus "impermissibly broadened," in the court's terms, only if the officer takes action that intrudes on Fourth Amendment interests more than can be justified by the nature of the stop. See, *e.g.*, *Knowles*, 525 U.S. at 117-118; *Place*, 462 U.S. at 707-710. The fact that the officer may engage in other conduct—even conduct that could detect the possibility of an otherwise unrelated crime—that does *not* intrude on Fourth Amendment interests does not broaden the scope of a *Terry* stop or other Fourth Amendment search or seizure. See, *e.g.*, *Whren* v. *United States*, 517 U.S. 806, 812-813 (1996) (no violation of Fourth Amendment when narcotics were observed in car stopped for traffic violation); *United States* v. *Villamonte-Marquez*, 462 U.S. 579, 584 n.3 (1983) (no violation of Fourth Amendment in plain-view discovery of marijuana during unrelated administrative boarding of vessel); *Colorado* v. *Bannister*, 449 U.S. 1 (1981) (per curiam) (plain-view seizure of stolen items observed during unrelated traffic stop permissible). Accordingly, it does not render the stop unconstitutional.

c. Respondent has argued (Br. in Opp. 6) that the traffic stop in this case was unconstitutional because "the troopers extended the duration of the traffic stop" in a way that was unjustified under *Terry*. Respondent is mistaken. In the current posture of this case, it must be assumed that the duration of the traffic stop was reasonable and within the limits set by *Terry*.

First, the Illinois Supreme Court did not conclude that the dog sniff extended the duration of the traffic stop at all. To the contrary, the facts recited by the court—that Trooper Gillette "was still writing the warning ticket when Trooper Graham arrived with his drug-detection dog and began walking around defen-

dant's car," Pet. App. 3a—establish that the dog sniff did not increase the duration of the stop. And the court squarely rested its ultimate decision not on any increase in the length of the stop caused by the dog sniff, but on the principle that "the State has not offered sufficient justification for implementing a canine sniff" and that such a sniff "impermissibly broadened the scope of the traffic stop into a drug investigation." *Id.* at 4a. The question before this Court concerns the permissibility of a dog sniff during a traffic stop, not whether the duration of the traffic stop in this case was extended unreasonably.

Moreover, if anything extended the duration of the stop, it was not the dog sniff, but the various steps taken by Trooper Gillette during the stop, such as radio checks on the validity of respondent's license, the presence of outstanding warrants, and respondent's criminal history, and brief questioning of defendant's purposes and mode of travel. Pet. App. 2a-3a. The Illinois Supreme Court, however, engaged in no analysis of whether those steps extended the duration of the traffic stop unjustifiably, and it reached no conclusion on that point.[5]

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[5] Although the Supreme Court of Illinois did not address the matter, the state court of appeals did address respondent's contention that Gillette called the dispatcher for a criminal history check as a delay tactic. The court found that the dispatcher responded to Gillette's request (immediately after which Gillette began writing the warning ticket) just 44 seconds after the request was made. Pet. App. 16a-17a. The court of appeals thus correctly concluded that any delay was *de minimis*. *Ibid.* See *United States* v. *Purcell*, 236 F.3d 1274, 1279 (11th Cir. 2001) ("[T]he request for the criminal histories prolonged the traffic stop, at most, by approximately three minutes. We conclude that this delay was *de minimis* in the context of the totality of the circumstances of this traffic stop."); cf. *United States* v. *Childs*, 277 F.3d 947, 953 (7th Cir.) (en banc) (finding that delay of license and warrant checks caused by officer speaking to passenger at traffic stop did not violate the Fourth Amendment because "[t]he extra time, if any, was short—not nearly enough to make the seizure 'unreasonable.'"), cert. denied, 537 U.S. 829 (2002); *United States* v. *$404,905.00 in U.S. Currency*, 182 F.3d 643, 648-649 (8th Cir. 1999), (holding that a two-minute delay for dog sniff was a *de minimis* intrusion), cert. denied, 528 U.S. 1161 (2000); *United States* v. *Morgan*, 270 F.3d 625, 631-632 (8th Cir.) (finding *de minimis* less than 10-minute delay caused by walking narcotics-detecting dog around vehicle), cert. denied, 537 U.S. 849 (2002).

Finally, the duration of the stop in this case did not violate the appropriate limits on *Terry* stops. In determining whether a detention is too prolonged to be justified as an investigative stop, this Court has looked to whether the police acted in a diligent and reasonable manner in pursuing their investigation. *Sharpe*, 470 U.S. at 686-687. In this case, the circumstances of respondent's stop suggest no lack of diligence or reasonableness on the part of the police. The entire stop, from inception to the time Trooper Gillette changed the activity code to a narcotics detention, took less than nine minutes. Pet. App. 17a. That is well within the reasonable time period for a routine traffic stop. See, *e.g.*, *Sharpe*, 470 U.S. at 683 (finding 20-minute investigative stop reasonable under circumstances of the case); cf. *Place*, 462 U.S. at 709-710 (90-minute detention of luggage too long under circumstances of the case).[6] The steps the officer took in determining the appropriate course to take were reasonably related to the purposes of the stop—the decision whether to issue a traffic

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[6] See *Purcell*, 236 F.3d at 1278-1279 (14-minute traffic stop held reasonable), cert. denied, 534 U.S. 830 (2001); *United States* v. *Shabazz*, 993 F.2d 431, 438 (5th Cir. 1993) (noting that a computer check of a motorist's driver's license, insurance papers, and vehicle registration may take 15 minutes).

ticket or a warning citation or to take some other step to address the violation he had observed.

CONCLUSION

The judgment of the Supreme Court of Illinois should be reversed.

Respectfully submitted.

THEODORE B. OLSON
Solicitor General

CHRISTOPHER A. WRAY
Assistant Attorney General

MICHAEL R. DREEBEN
Deputy Solicitor General

JAMES A. FELDMAN
Assistant to the Solicitor General

JOHN A. DRENNAN
Attorney

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